

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

IN RE:) CHAPTER 7
) CASE NO. 96-50864-JDW
ISIAH HILLARD,)
)
DEBTOR)

ORDER

Debtor has filed a Motion To Approve Settlement Agreement. The motion requests that the Court approve the settlement of a worker's compensation claim, which settlement was consummated with disbursements several months prior to the hearing. Debtor was represented in the worker's compensation case by Pauline Carter Council, an attorney practicing in Valdosta, Georgia.

This case was first filed as a Chapter 13 case on September 24, 1996. The case was converted to a case under Chapter 7 on March 5, 1997. The worker's compensation case was settled two months prior on January 13, 1997. The amount of the settlement of the worker's compensation case was \$18,000.

Debtor has prosecuted this worker's compensation claim during the pendency of the Chapter 13 case. During that time, the unsecured creditors were expecting to receive a 24.59 percent dividend pursuant to the Debtor's Chapter 13 plan which was confirmed on February 26, 1997. Rather than fund the plan as proposed, Debtor converted the Chapter 13 case to

a case under Chapter 7 by application dated March 5, 1997.

The motion shows that Debtor received \$11,262.45. Debtor's attorney in the worker's compensation case received \$6,975.00 as attorney's fees and expenses. In addition, Debtor contends that he received \$1,000.00 in advance, presumably from the worker's compensation attorney, for use in paying household living expenses.

With the proceeds from the settlement, Debtor says he paid \$3,500.00 to buy an automobile for his wife. In addition, Debtor paid \$775.00 to catch up payments on his house, \$500.00 for property taxes, \$350.00 for house insurance, \$325.00 for car insurance and the balance for living expenses which had accumulated during the time when Debtor was unemployed due to the injury.

These circumstances pose the prospect of a troublesome situation. Substantial attorney's fees have been disbursed to an attorney representing the Debtor where the representation occurred during the pendency of a Chapter 13 case. Matters of compensation for attorneys representing debtors in bankruptcy proceedings must be approved by the Bankruptcy Court. Debtor stated at the hearing on the motion that he had advised Ms. Council of the fact that he was a debtor in a Chapter 13 case during the time when she was representing him in the worker's compensation case and receiving compensation in the form of attorney's fees in that capacity.

At the hearing, questions were raised as to the basis of the settlement in terms of whether the funds were used to compensate the Debtor for a disability or, instead, pay the Debtor for unpaid future wages. These questions were significant in that the matter of the settlement of this case during the pendency of the Chapter 13 case and immediately prior to the conversion of the case to Chapter 7 may give the court some cause to consider dismissal of this case for bad faith. It is a troublesome prospect to consider that creditors were given assurances by the Debtor of payment only to have those assurances evaporate immediately following the receipt of substantial funds to the Debtor via this settlement. The question of whether some of these funds should have been properly payable to the creditors or whether, instead, the funds represented post-Chapter 7 petition earnings was one which needed to be explained by the attorney representing the Debtor, as a prerequisite to the receipt of attorney's fees in the case.

Accordingly, it is hereby

ORDERED that a continued hearing on the motion will be convened in the U.S. Courtroom, 3rd Floor, Federal Building, Carswell Street, Waycross, Georgia on **June 26, 1997** at **9:00 a.m.**; and it is hereby further

ORDERED that Pauline Carter Council, Debtor's attorney in the worker's compensation proceeding, shall supply the Court

with the following in lieu of appearance at that hearing:

- (1) Itemized statement of time incurred in the prosecution of the worker's compensation case;
- (2) Itemization of the basis of the Debtor's claim including copies of any settlement presentations which may have been made in the case;
- (3) An allocation of the settlement as among the various aspects of the Debtor's claim including permanent impairment, lost wages and future wages;
- (4) Copies of any documentation which may have been filed with the Worker's Compensation Board seeking approval of the settlement and allowance of attorney's fees; and it is hereby further

ORDERED that in the event Ms. Council prefers to appear at the hearing, a course which would be preferable under the circumstances, she should bring with her the entire worker's compensation file so as to be in a position to answer the various questions which have been outlined hereinabove together with any other questions which might be raised at that hearing in connection with the consideration of the motion to allow the settlement and award the attorney's fees specified in the motion.

SO ORDERED, this 30th of May, 1997.

James D. Walker, Jr.

United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Franklin D. Hayes
Attorney At Law
P. O. Box 2423
Douglas, GA 31533

Mary Jane Cardwell
Chapter 7 Trustee
P. O. Box 543
Waycross, GA 31502

Pauline Carter Council
Attorney At Law
2410 Patrick Place
Valdosta, GA 31601

Isiah Hillard
1219 Old Bell Lake Road
Douglas, GA 31533

This _____ day of May, 1997.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court